

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

DECARLO TERRELL MITCHELL, )  
Petitioner, )  
vs. ) NO. CIV-09-1064-HE  
MIKE MULLIN, Warden, )  
Respondent. )

## **ORDER**

Petitioner Decarlo Terrell Mitchell, a state prisoner appearing *pro se*, instituted this action under 28 U.S.C. § 2254 seeking habeas relief. Consistent with 28 U.S.C. §636(b)(1)(B) and (C), the matter was referred for initial proceedings to Magistrate Judge Valerie K. Couch, who has recommended that a motion to dismiss filed by the respondent be granted and the petition be dismissed as being untimely.

The petition filed an objection stating that the limitations period is subject to equitable tolling because he is actually innocent of the offense. The court has conducted a de novo review and agrees with the magistrate judge that the petitioner has not shown he diligently pursued his claims and has not demonstrated actual innocence.

Accordingly, the court adopts Magistrate Judge Couch's Report and Recommendation, grants respondent's motion to dismiss and dismisses the habeas petition.

## IT IS SO ORDERED.

Dated this 26th day of March, 2010.

  
JOE HEATON  
UNITED STATES DISTRICT JUDGE